

BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**KEVIN EDWIN BROOKS**  
53 Langford Lane  
Ladera Ranch, CA 92694

**Certified Public Accountant**  
**Certificate No. 62641**

Respondent.

Case No. AC-2011-11

OAH No. 2011110170

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on June 28, 2012.

It is so ORDERED May 29, 2012.



FOR THE CALIFORNIA BOARD OF  
ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 CARL W. SONNE  
Deputy Attorney General  
4 State Bar No. 116253  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
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6 San Diego, CA 92186-5266  
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*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **KEVIN EDWIN BROOKS**  
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14 **Ladera Ranch, CA 92694**

15 **Certified Public Accountant**  
16 **Certificate No. 62641**

17 Respondent.

Case No. AC-2011-11

OAH No. 2011110170

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of  
22 Accountancy. She brought this action solely in her official capacity and is represented in this  
23 matter by Kamala D. Harris, Attorney General of the State of California, by Carl W. Sonne,  
24 Deputy Attorney General.

25 2. Respondent Kevin Edwin Brooks (Respondent) is represented in this proceeding by  
26 attorney Wrenn E. Chais, whose address is: 300 S. Grand Avenue, Suite 2600,  
27 Los Angeles, CA 90071-3119.

28 / / /

1           3.     On or about November 13, 1992, the California Board of Accountancy (CBA) issued  
2 Certified Public Accountant Certificate Number 62641 to Kevin Edwin Brooks (Respondent).  
3 The Certified Public Accountant Certificate will expire on November 30, 2012, unless renewed.

4                               JURISDICTION

5           4.     First Amended Accusation No. AC-2011-11 (hereinafter, Accusation) was filed  
6 before the California Board of Accountancy (CBA) , Department of Consumer Affairs, and is  
7 currently pending against Respondent. The Accusation and all other statutorily required  
8 documents were properly served on Respondent on April 30, 2012. Respondent timely filed his  
9 Notice of Defense contesting the Accusation.

10          5.     A copy of Accusation No. AC-2011-11 is attached as Exhibit A and incorporated  
11 herein by reference.

12                               ADVISEMENT AND WAIVERS

13          6.     Respondent has carefully read, fully discussed with counsel, and understands the  
14 charges and allegations in Accusation No. AC-2011-11. Respondent has also carefully read, fully  
15 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
16 Order.

17          7.     Respondent is fully aware of his legal rights in this matter, including the right to a  
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
19 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
20 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
21 the attendance of witnesses and the production of documents; the right to reconsideration and  
22 court review of an adverse decision; and all other rights accorded by the California  
23 Administrative Procedure Act and other applicable laws.

24          8.     Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
25 every right set forth above.

26                               CULPABILITY

27          9.     Respondent admits the truth of each and every charge and allegation in Accusation  
28 No. AC-2011-11.

10. Respondent agrees that his Certified Public Accountant Certificate is subject to discipline and he agrees to be bound by the CBA's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the California Board of Accountancy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

## CONTINGENCY

12. This stipulation shall be subject to approval by the California Board of Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of the California Board of Accountancy may communicate directly with the CBA regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the CBA shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the CBA may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 62641 issued to Respondent Kevin Edwin Brooks (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions. .

1. **Actual Suspension.** Certified Public Accountant Certificate No. 62641 issued to Kevin Edwin Brooks is suspended for four (4) years. During the period of suspension the Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

2. **Obey All Laws.** Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

3. **Submit Written Reports.** Respondent shall submit, within ten (10) days of completion of the quarter, written reports to the CBA on a form obtained from the CBA. The Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the CBA or its representatives.

4. **Personal Appearances.** Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the CBA or its designated representatives, provided such notification is accomplished in a timely manner.

5. **Comply With Probation.** Respondent shall fully comply with the terms and conditions of the probation imposed by the CBA and shall cooperate fully with representatives of the Board of Accountancy in its monitoring and investigation of the Respondent's compliance with probation terms and conditions.

1           6.     **Practice Investigation.** Respondent shall be subject to, and shall permit, practice  
2 investigation of the Respondent's professional practice. Such a practice investigation shall be  
3 conducted by representatives of the CBA, provided notification of such review is accomplished in  
4 a timely manner.

5           7.     **Comply With Citations.** Respondent shall comply with all final orders resulting  
6 from citations issued by the Board of Accountancy.

7           8.     **Tolling of Probation For Out-of-State Residence/Practice.** In the event  
8 Respondent should leave California to reside or practice outside this state, Respondent must  
9 notify the CBA in writing of the dates of departure and return. Periods of non-California  
10 residency or practice outside the state shall not apply to reduction of the probationary period, or  
11 of any suspension. No obligation imposed herein, including requirements to file written reports,  
12 reimburse the CBA costs, or make restitution to consumers, shall be suspended or otherwise  
13 affected by such periods of out-of-state residency or practice except at the written direction of the  
14 CBA.

15          9.     **Violation of Probation.** If Respondent violates probation in any respect, the CBA,  
16 after giving Respondent notice and an opportunity to be heard, may revoke probation and carry  
17 out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is  
18 filed against Respondent during probation, the CBA shall have continuing jurisdiction until the  
19 matter is final, and the period of probation shall be extended until the matter is final.

20          10.    **Completion of Probation.** Upon successful completion of probation, Respondent's  
21 license will be fully restored.

22          11.    **Active License Status.** Respondent shall at all times maintain an active license  
23 status with the CBA, including during any period of suspension. If the license is expired at the  
24 time the CBA's decision becomes effective, the license must be renewed within 30 days of the  
25 effective date of the decision.


26          12.    **Cost Reimbursement.** Respondent shall reimburse the CBA \$5,985.78 for its  
27 investigation and prosecution costs. The payment may be made in one payment within 60 days of  
28 the Effective Date of this Decision, or by a payment plan comprised of equal monthly payments,

1 provided that the final payment shall be made no later than one year before probation is scheduled  
2 to terminate.

3 ACCEPTANCE

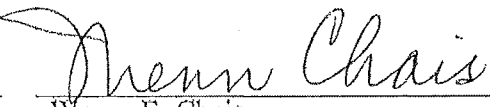
4 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
5 discussed it with my attorney, Wrenn E. Chais. I understand the stipulation and the effect it will  
6 have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and  
7 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
8 Decision and Order of the California Board of Accountancy.

9  
10 DATED: 5/1/13

  
11 KEVIN EDWIN BROOKS  
12 Respondent

13 I have read and fully discussed with Respondent Kevin Edwin Brooks the terms and  
14 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
15 I approve its form and content.

16  
17 DATED: 5-2-12

  
18 Wrenn E. Chais  
19 Attorney for Respondent  
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Dated: May 9, 2012

*[Handwritten signature]*

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**Exhibit A**

**Accusation No. AC-2011-11**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 CARL W. SONNE  
Deputy Attorney General  
4 State Bar No. 116253  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-3164  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

9 **BEFORE THE**  
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10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2011-11

13 **KEVIN EDWIN BROOKS**  
14 **53 Langford Lane**  
15 **Ladera Ranch, CA 92694**

**FIRST AMENDED ACCUSATION**

16 **Certified Public Accountant**  
17 **Certificate No. 62641**

Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Patti Bowers (Complainant) brings this First Amended Accusation (Accusation)  
22 solely in her official capacity as the Executive Officer of the California Board of Accountancy,  
23 Department of Consumer Affairs.

24 2. On or about November 13, 1992, the California Board of Accountancy (CBA) issued  
25 Certified Public Accountant Certificate Number 62641 to Kevin Edwin Brooks (Respondent).  
26 The Certified Public Accountant Certificate will expire on November 30, 2012, unless renewed.  
27  
28

## JURISDICTION

3. This Accusation is brought before the CBA under the authority of the following laws.  
All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5063(b)(4) states:

(b) A licensee shall report to the board in writing the occurrence of any of the following events occurring on or after January 1, 2003, within 30 days of the date the licensee has knowledge of the events:

(4) Any notice from the Securities and Exchange Commission to a licensee requesting a Wells Submission.

5. Section 5100 states:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(h) Suspension or revocation of the right to practice before any governmental body or agency.

"(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation."

6. Section 5107(a) of the Code states:

The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

7. Section 5109 of the Code provides that the expiration, cancellation, forfeiture or suspension of a license shall not deprive the CBA of jurisdiction to proceed with any

1 investigation of or action or disciplinary action against the licensee, or to render a decision  
2 suspending or revoking a license.

### 3 FACTS

4 8. On May 13, 2009, the CBA received a letter dated May 11, 2009 from counsel for  
5 Respondent, notifying the CBA of Respondent's suspension from appearing or practicing before  
6 the Securities and Exchange Commission (SEC) as an accountant. The letter stated a final  
7 judgment as to Respondent in *Securities and Exchange Commission v. Quest Software, Inc.*, Case  
8 No. 8:09-cv-315, was rendered on April 1, 2009 in the United States District Court, Central  
9 District of California.

10 9. Enclosed in his counsel's letter was an Order Instituting Administrative Proceedings  
11 Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing  
12 Remedial Sanctions (Securities and Exchange Act of 1934 Release No. 59785/April 17, 2009,  
13 Accounting and Auditing Enforcement Release No. 2964/April 17, 2009, Administrative  
14 Proceeding File No. 3-13447). The Order noted that Respondent submitted an Offer of  
15 Settlement, which the SEC determined to accept, and Respondent consented to the entry of the  
16 Order. The SEC's complaint alleged that Respondent misstated Quest's financial statements by  
17 failing to report compensation expense associated with stock options granted in-the-money  
18 through undisclosed backdating of grant dates from 1999 through 2001. The complaint also  
19 alleged that Respondent failed to ensure the stock option grants at Quest were properly accounted  
20 for and disclosed. The complaint further alleged Respondent caused misrepresentations to be  
21 made to Quest's auditors by stating in management representation letters that all stock options  
22 were made with an exercise price equal to the fair market value of Quest stock on the date of  
23 grant.

24 10. A final judgment was entered against Respondent on April 1, 2009, which  
25 permanently enjoined him from future violations of Section 17(a)(2) and (3) of the Securities Act  
26 of 1933 and Sections 13(b)(5) and 16(a) of the Exchange Act and Rules 13b2-1, 13b2-2, and 16a-  
27 3 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and  
28

1 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder, in the civil  
2 action entitled *SEC v. Quest Software, Inc., et al.*, Civil Action Number SA CV 09-315 AG  
3 (MLGx), in the United States District Court for the Central District of California. The final  
4 judgment also ordered Respondent to pay a civil penalty of \$60,000, disgorgement of \$34,775,  
5 and prejudgment interest of \$5,808.29. Respondent consented to the entry of the judgment  
6 without admitting or denying any of the allegations in the complaint.

7 11. The Order set forth in Securities and Exchange Commission Release No. 59785/  
8 Administrative Proceeding File No. 3-13447 suspends Respondent from appearing or practicing  
9 before the SEC as an accountant, and provided that after five years from the date of the Order,  
10 Respondent may request the SEC to consider his reinstatement by submitting an application to  
11 resume appearing or practicing before the SEC.

#### 12 FIRST CAUSE FOR DISCIPLINE

##### 13 (Discipline by SEC)

14 12. Respondent is subject to disciplinary action under section 5100(l) of the code in that:  
15 (i) on or about April 1, 2009, final judgment was entered against Respondent by the SEC  
16 enjoining Respondent from further SEC violations, and ordering Respondent to pay a civil  
17 penalty of \$60,000, disgorgement of \$34,775, and prejudgment interest of \$5,808.29; and (ii) on  
18 or about April 17, 2009, in SEC Release No. 59785/ Administrative Proceeding File No. 3-13447,  
19 the SEC suspended Respondent's right to appear or practice before that body. The circumstances  
20 leading to Respondent's suspension are set forth in paragraphs 6 to 11, above.

#### 21 SECOND CAUSE FOR DISCIPLINE

##### 22 (Discipline by Governmental Agency)

23 13. Respondent is subject to disciplinary action under section 5100(h) of the code in that  
24 on or about April 17, 2009 a governmental body or agency suspended Respondent's right to  
25 practice before that governmental body or agency following a judgment against Respondent by  
26  
27  
28

1 that governmental agency on or about April 1, 2009. The circumstances are described in  
2 paragraphs 6 to 12, above.

3 THIRD CAUSE FOR DISCIPLINE

4 (Failure to Report Wells Submission)

5 14. Respondent is subject to disciplinary action under sections 5100(g) and 5063(b)(4) of  
6 the code in that Respondent failed to report a request from the United States Securities and  
7 Exchange Commission, made on or before February 28, 2008 for a Wells Submission to the CBA  
8 within 30 days of notice thereof.

9 PRAYER

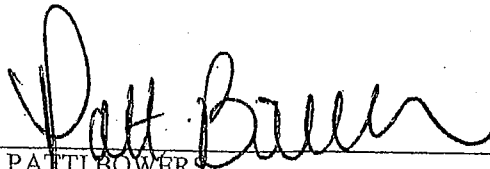
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
11 and that following the hearing, the California Board of Accountancy issue a decision:

12 1. Revoking or suspending or otherwise imposing discipline upon Certified Public  
13 Accountant Certificate Number 62641, issued to Kevin Edwin Brooks;

14 2. Ordering Kevin Edwin Brooks to pay the California Board of Accountancy the  
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
16 Professions Code section 5107; and

17 3. Taking such other and further action as deemed necessary and proper.

18  
19  
20 DATED: April 27, 2012

  
PATTI BOWERS  
Executive Officer  
California Board of Accountancy  
Department of Consumer Affairs  
State of California  
Complainant

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23 SD2011800134/80519732.doc